IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

WEDNESDAY, THE 31ST OCTOBER 2007 / 9TH KARTHIKA 1929

MFA.No. 1504 of 2001

OP(MV).1168/1999 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, THRISSUR
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APPELLANT/PETITIONER

RAJESH ALIAS JAGMON (MINOR)
S/O. AATTUVEPIL JAYARAGAN,
ATTUVEPPIL HOUSE,
KANIGAMANLAM, THRISSUR,
REP. BY GUARDIAN MOTHER KOUSELYA,
W/O. JAYARAJAN.

BY ADV. SRI.DILIP J. AKKARA

RESPONDENTS/RESPONDENTS
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1. **DINESH KUMAR,**
   S/O. CHAKKUNNY,
   THERKERAYIL HOUSE,
   KONATTUKUNNU DESOM,
   THEKKUMKARA VILLAGE,
   THRISSUR.

2. **V. SITALAKSHMI AMMAL,**
   CHERAYATH MADAM,
   ANURLI, IRINJALAKUDA.

3. **THE NEW INDIA INSURANCE CO. LTD.,**
   BRANCH, MAIN ROAD, IRINJALAKUDA.

BY ADV. SRI.P.GOPALAKRISHNA MENON --- R1 AND R2
SRI.M.JITHESH MENON
SRI.KKM.SHERIF --- R3
SMT.K.A.ANGEL TREENA

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 31/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY & K.HEMA, JJ.

M.F.A.No. 1504 of 2001

Dated this the 31st day of October, 2007

Judgment

Koshy,J.

Appellant/Claimant sustained serious injuries in a motor accident on 13.10.1997. He claimed a total compensation of Rs.6,00,000/-. The tribunal found that the accident occurred due to the negligence of the driver of the offending vehicle insured by the third respondent insurance company. But, compensation awarded was only Rs.3,72,000/-. Only quantum of compensation is disputed in this appeal.

2. As far as the injuries are concerned, the tribunal has detailed the injuries and treatment as follows:

> "After the accident, the petitioner was taken to Lal Memorial Hospital, Irinjalakuda as evident from Ext.A2 wound certificate. He was unconscious and there was generalised convulsions. Eyes were deviated to left side and pupils were constricted and he had laboured breath with black eye. There was bleeding from left ear. There was a deep lacerated wound and contused abrasion on the frontal region. He was referred to a neuro-surgeon for better management since head injury was suspected. He was admitted to Elite Mission Hospital, Koorkkanchery as evident from Ext.A8 series

> copies of discharge summaries. The originals of the discharge summaries have not produced since the petitioner is still continuing under treatment. He who was admitted to the Elite Mission Hospital on 13.10.1997 had undergone treatment till 21.12.1997. CT scan revealed fracture to the parietal bone with diffused cerebral oedema of brain. Tracheostomy was performed and the petitioner was put on ventilator. Final diagnosis revealed that he had brain stem injury. He was again admitted to the same hospital on 12.1.1998 and was discharged on 13.1.1998. Again, he was admitted to the same hospital on 27.1.1998 and was discharged on 29.1.1998. Again he was admitted to the hospital on 30.5.1999 and was discharged on 1.6.1999. Later, he was admitted to the same hospital on 18.7.1999 and was discharged on 19.7.1999. Again, he was admitted to the same hospital on 3.8.1999 and was discharged on 12.8.1999. Further, he was admitted to the same hospital on 5.4.2000 and was discharged on 6.4.2000. Again, he was admitted on 2.5.2000 and was discharged on 7.5.2000. During all these admissions, he had under the treatment of Dr.Mohanlal who is the neuro-surgeon of the Elite Mission Hospital. I had occasion to see the petitioner on the date of the trial since he was brought before me. Even now, he is continuing treatment."

Ext.A6 disability certificate issued by the neuro-surgeon states as follows:

> "Jagmohan had sustained a serious head injury in a RTA on 13.10.1997. Was in a critical condition for a long time and was discharged on 21.12.1997. Ever since he was in and out of hospital several times due to complicated

> seiziures out of the injuries especially recurrent seiziures.
>
> At present, he has the following permanent disabilities, all arising out of the injuries:
>
> 1. Grossly impaired higher functions - memory and intelligence.
>
> 2. Impaired gait due to spasticity of the limbs - a result of the brain stem injury.
>
> 3. Recurrent seizures - post traumatic epilepsy.
>
> He will not be able to lead a normal married life or do work to earn his daily bread. He has to be on life long medication.
>
> He has a permanent disability of Fifty percent."

The tribunal after seeing the claimant observed as follows:

> "The petitioner has produced Ext.A6 certificate issued by the neuro-surgeon which states that he is having a permanent disability of 50%. I had occasion to see the petitioner on the date of the trial. At present, he has a blurred and altered speech. He cannot remember things properly and he cannot walk without any support."

The tribunal awarded compensation for 50% disability. It is the contention of the appellant that in view of the difficulties mentioned in the medical certificate and the condition of the appellant noticed by the tribunal himself, it can be seen that he will not get any

employment. He has to depend upon others throughout his life and as far as the loss of earning power is concerned, it is 100% and compensation has to be given for 100%. However, considering the medical certificate produced by the claimant, we are not enhancing the percentage of disability as assessed by the neuro-surgeon.

3. It is contended that he was a sales representative in a wholesale pharmaceuticals distributor agency at Thrissur. His employer issued a certificate stating that he was getting an average income of Rs.3,500/- per month as daily batta and sales commission. The managing partner of the firm was examined as PW2. During cross-examination, he stated that there is no fixed salary and he was paid Rs.100/- daily and 1% commission depending upon the sales. The commission will vary depending upon the sales. But, the fact that he was a sales representative cannot be denied because the F.I.R. itself shows that the accident occurred while he was travelling with the medical supplies. So, even if he is only getting Rs.100/- excluding commission and getting 25 days' work, he will get Rs.2,500/- as monthly income. Even discarding Ext.A6 certificate, only Rs.2,500/- can be taken as monthly income. We have taken 50% disability as calculated by the medical practitioner. Virtually, he is unable to earn anything in

future because of his disability. The tribunal has taken 17 as the multiplier. He was aged 26 at the time of accident. Going by the second schedule, 18 is the multiplier and a three-member Bench of the Apex Court in Smt. Supe Dei and others v. M/s. National Insurance Company Ltd. and another (JT 2002 Supp.1 SC 451) has held that second schedule should be taken as a guideline while calculating the compensation under section 166 also except in exceptional circumstances. A similar view was taken in Abati Bezbaruah v. Deputy Director General, Geological Survey of India and another ((2003) 3 SCC 148) and recently in A.P.S.R.T.C. v. M. Pentaiah Chary (2007 AIR SCW 5689). Here, there are no exceptional circumstances. Therefore, compensation payable will be Rs.2500 x 12 x 18 x 50/100 = Rs.2,70,000/- for disability and loss of earning power. The tribunal has granted Rs.1,53,000/-. So, additional compensation payable for disability and loss of earning power will be Rs.1,17,000/-.

4. It is submitted that the award itself shows that he was to the hospital and back on eight times and he required continued medication. Medical bills for Rs.91,681/- were produced. Apart from the medical bills, there will be lot of expenses during the

period of treatment, but, total medical expenses granted was only Rs.95,000/- including transportation to hospital, extra nourishment etc. We award Rs.20,000/- more for continuing the treatment as he has lost memory and needs help of others for transportation and other needs.

5. It is submitted that he is not married and his marriage prospects are lost and only his mother is in the house. She is very aged. Only Rs.6,000/- was granted towards by-stander's expenses. He needs life-long by-stander to support him even for daily routine matters. Therefore, we award Rs.3,000/- more on that count. Therefore, additional compensation payable will be Rs.1,40,000/-.

6. Even though it was argued that compensation awarded under other heads are very inadequate, considering the total amount awarded, we are not enhancing the compensation under other heads. The above additional compensation of Rs.1,40,000/- should be deposited by the third respondent insurance company with 7.5 % interest from the date of application till its deposit over and above the compensation awarded by the tribunal. On deposit of the above amount, Rs.40,000/- can be disbursed to the claimant and balance should be deposited in a

nationalised bank for ten years and yearly interest can be disbursed to the claimant, if necessary.

The appeal is allowed partly.

J.B.KOSHY
JUDGE

K. HEMA
JUDGE

vaa

J.B. KOSHY AND
K.HEMA,JJ.

M.F.A. No. 1504 of 2001

Judgment

Dated:31st October, 2007